

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS CARABALLO,

Plaintiff,

-against-

CITY OF NEW YORK, DETECTIVE KAISER
SURRIGA, DETECTIVE WAYNE COSTELLO, AND
DETECTIVE ROBERT DIFALCO,

Defendants.
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**NOTICE OF MOTION FOR
SUMMARY JUDGMENT
PURSUANT TO RULE 56 OF
THE FEDERAL RULES OF
CIVIL PROCEDURE**

21-CV-285 (ARR) (VMS)

PLEASE TAKE NOTICE that, upon the annexed Declaration of Gregory Accarino, dated October 2, 2023, the Exhibits annexed thereto, the Local Rule 56.1 Statement of Material Facts in support of Defendants' Motion for Summary Judgment, the accompanying Memorandum of Law in Support of Defendants' Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, dated October 2, 2023, and all prior papers and proceedings had herein, defendants the City of New York, Kaiser Surriga, Wayne Costello, and Robert DiFalco will move this Court, before the Honorable Allyne R. Ross, at the United States District Court of the Eastern District of New York, located at 225 Cadman Plaza East, Brooklyn, New York 11201, on a date and time to be determined by the Court, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the grounds that there are no material issues of fact in dispute that warrant a trial on all of plaintiff's claims except as to part of his excessive force claim against defendants Costello and DiFalco to the extent plaintiff alleges that plaintiff was thrown to the ground and struck with batons, as well as his failure to intervene claim insofar as it relates to defendant Surriga's alleged failure to intervene to stop plaintiff from

being struck with batons, and defendants are entitled to judgment as a matter of law, and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's Order dated August 2, 2023, Plaintiff's opposition is to be served on or before December 1, 2023, and Defendants' reply, if any, is to be served and filed on or before December 15, 2023.

Dated: New York, New York
October 2, 2023

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By: /s/ Gregory Accarino
Gregory Accarino
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CC: **BY MAIL AND EMAIL**
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